

**OPINION  
63-113**

November 19, 1963            (OPINION)

DEPARTMENT OF PUBLIC INSTRUCTION

RE:    Transportation Payments

This is in response to your letter in which you ask for a clarification of certain language found in section 15-34-26.1 of the North Dakota Century Code, as amended by Chapter 155 of the 1963 Session Laws. You also furnish and call to our attention certain action taken by the Legislative Research Committee in proposing the legislation which ultimately became law. In addition to this, you point out some of the resulting inequities should the language in question be construed to mean the amount paid in the school year of 1963 and 1964.

Section 15-34-26.1 of the North Dakota Century Code, as is material here, provides as follows:

REDUCTION IN PAYMENTS - EXCESS LEVY FOR TRANSPORTATION. Using transportation payments determined to be payable during the 1962-1963 school year as a basic amount, the county superintendent of schools shall calculate the amount which will be paid to each school district under the amended payment formula as provided in section 15-34-24, during the 1963-1964 school year. If the amount of such payment to any school district is determined to be less than the amount payable during the 1962-1963 school year the superintendent of public instruction shall reduce the amount of the payment to each such school district during the 1963-1964 school year by one-third of the amount of such difference. Payments to each such school district during the 1964-1965 school year shall be reduced by two-thirds of the difference between the amount payable during the 1962-1963 school year and the amount payable during the 1963-1964 school year under the formula provided in section 15-34-24, and payments during the 1965-1966 school year shall be the amount due such district under the amended payment formula as provided in section 15-34-24.\* \* \*" (Underscoring ours).

The term "payable during the 1962-1963 school year" leaves unanswered some vital questions such as payable pursuant to what law or on what basis. It strongly suggests from the reading of the entire section that such term implies a reference to the law in effect at the time and not to the amount paid during the school year. The term as it stands now is subject to more than one interpretation and as such is ambiguous. Therefore, we can resort to extrinsic aids in determining the legislative intent of the phrase in question and the entire section.

Chapter 155, which amends the section in question, was enacted by Senate Bill No. 48. It is observed that the bill passed without any

amendment. The report of the North Dakota Legislative Research Committee for the Thirty-eighth Legislative Assembly on page no. 17 sets forth what is intended to be accomplished by the passage of Senate Bill No. 48, as follows:

SENATE BILL NO. 48. The recommendation of the Committee in regard to the revision of the State aid for transportation formula is found in Senate Bill No. 48. It will be noted that section 3 of such bill would authorize any school district to levy a tax for the general fund of the district to offset any reduction in transportation payments that may result from the proposed change in the transportation formula for a period of five years after the passage of the Act. Some districts will gain additional State aid under the proposed formula and others will receive less. A means must be provided for any school district which is already levying the maximum mill levy authorized by law to levy the additional amount that may be needed to operate its transportation system, in the event the new formula would reduce the transportation aid payments for that district. To further alleviate the adverse effects upon districts receiving less revenue under the new formula, the bill provides that any reduction in State payments be made in three increments over a three-year period."

The minutes of the Legislative Research Committee on page no. 8, dated November 12-14, 1962, as pertaining to this bill contained the following information:

It was moved by Senator Holand, seconded by Senator Redlin, and carried that the bill providing a new formula for the distribution of State Transportation aid payments be amended to provide that reductions in payments to any school district during the three years following the passage of this Act not exceed one-third of the difference between the amount paid under the present formula for the 1962-1963 school year and the amount earned under the revised formula for the 1963-1964 school year, and such reduction shall be limited to two-thirds of such difference for the 1964-1965 school year."  
(Underscoring ours.)

From the foregoing it appears quite eminent that the term "payable during the 1962-1963 school year" as a basic amount does not have reference to the actual amount in dollars and cents paid to the district during such school year, but rather refers to the formula or method under the existing law in arriving at the amount. If the phrase in question were construed to mean the amount in dollars and cents rather than the formula, it would make not allowances for any school district which was reduced or increased by reorganization, attachment or any other legal means. It could bring about the inequitable result in the district which was considerably reduced in size and pupils by permitting such district to receive a greater amount now even though it were not entitled to such amount if the law had not been changed. It would permit such district to receive payments to which it would not be entitled to under the old law or under the new formula. It would also penalize a district which has made substantial growth, both in area and in pupils. We do not believe that the Legislature intended to freeze the payments to the

school districts to the dollars and cents paid during the school year of 1962-1963.

Considering the overall effect of the new legislation on transportation payments, it becomes eminently clear that the Legislature intended to use the formula which was applied for making payments during the 1962-1963 school year as the basic amount rather than the exact dollars and cents for said school year. In other words, it was the formula and not the exact amounts which was intended to be used.

It appears that if the Legislature had in mind to freeze the amount in dollars and cents it would have used the term "paid" instead of the term "payable." The term as we mentioned earlier is wanting in some respects. It therefore, becomes necessary to supply the implied language to spell out the legislative intent and to give the law in question its true meaning. The opening sentence by construction would then read as follows:

Using transportation payments determined to be payable under the law in effect during the 1962-1963 school year as a basic amount \* \* \* \*." (Underscoring ours.)

The term "under the law in effect" really means the formula in effect or used during the 1962-1963 school year.

We must, therefore, construe the phrase "Using transportation payments determined to be payable during the 1962-1963 school year as a basic amount" to mean payments payable under the law in effect or the formula used to make payments for the 1962-1963 school year; that it means the formula used and not the specific amount in dollars and cents paid to certain school districts during the 1962-1963 school year. By giving this construction to the phrase in question, the rest of the Act permitting levies to recoup any losses can be fully used.

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